

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3934 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL CHELABHAI GODADBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

MR MA BUKHARI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the parties.

2. The sale of the land in dispute dated 20th

August, 1985 came to be declared illegal as being made in violation of sect.31 (1)(b) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act.

3. On the facts, the parties are not at variance. The Block No.96 is admeasuring 5 acres and 15 gunthas. It is held jointly by the respondent no. 2 and others. There is no dispute that the consolidation scheme was implemented in the village. From this block, the petitioner purchased undivided part thereof under the sale deed. He, jointly with the other holders of the land of the Block, is cultivating the same. Suo motu the Dy. Collector has taken the proceedings for cancelling the entry. Entry was made in favour of the petitioner on the basis of the document i.e. sale deed. This sale deed has also been declared to be illegal and which order has been affirmed in the revision.

4. In the facts of this case, the authorities instead of taking drastic action should have considered the matter for grant of post facto permission for the sale of the land. The petitioner has raised a specific ground before the revisional authority that contiguous to Block no.96, the petitioner is holding jointly Block No.92. In Block No.92, there is a well and from that well, water is drawn for cultivation of the land of the Block No.96. The revisional authority has even not cared to refer the same what to say to consider it. In the Special Civil Application, the petitioner made this averment very specifically and categorically in para-6, thereof, and respondent no.1 has not filed reply, meaning thereby, these facts remain uncontroverted. When the petitioner is having contiguous land, otherwise also, it is a fit case where the respondent, State of Gujarat, may send this matter for consideration of grant of post facto sanction for sale of the land, to the competent authority.

5. As a result of the aforesaid discussion, the impugned orders cannot be allowed to stand and accordingly, the Order of the Dy. Collector dated 20/04/1987, Annexure-A, and that of the revisional authority dated 24/02/1988, Annexure-B, are hereby quashed and set aside. The State of Gujarat is directed to send this matter for consideration to the Officer or the competent authority to grant post facto sanction for the sale of land in favour of the petitioner within a period of 15 days from the date of receipt of writ of this order and the competent authority/officer shall decide the matter within a period of one month thereafter and where the petitioner prays for an opportunity of

personal hearing, the same may be afforded. Where the Officer/authority decides not to grant post facto sanction for the sale of this land, a reasoned order may be passed and a copy of the same be sent to the petitioner by Reg.P.A.D. Liberty is granted to the petitioner for revival of this Special Civil Application in case of any difficulty. Rule and Special Civil Application stand disposed in the terms aforestated with no order as to costs.

(S.K. Keshote, J.)
(kamlesh)